



DISABILITY RIGHTS NEW MEXICO

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James Jackson, Executive Director

Promoting and Protecting the Rights of Persons with Disabilities

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Julie Weinberg, Director
Medical Assistance Division, HSD
P.O. Box 2348
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Via email: Julie.Weinberg@state.nm.us

Dear Julie,

I appreciate your calling me last week to discuss your decision to withdraw the state from the federal Money Follows the Person program. It was appropriate for you to follow up with an email message to stakeholders regarding this decision, even though it came well after the fact. I too would now like to follow up by further explaining my very serious concerns about the process as well as the rationale for the decision.

First, it was my understanding that the Martinez administration was committed to openness and transparency in government operations. An abrupt and arbitrary reversal of state policy, decided upon internally with no public input and communicated in secret to the federal government without notice to New Mexicans, is at odds with that policy and conveys an utter disregard for stakeholders and the disability community as well as the general public.

I'm sure you recall that, with encouragement from the disability community, in 2010 HSD applied for a planning grant to help develop an application to participate in the federal MFP program. The application went in over your signature, as Acting MAD Director, and indicated:

"New Mexico believes strongly that the Money Follows the Person Rebalancing Demonstration program provides state with critical tools to address gaps in the availability of community-based services for individuals with disabilities, including those with mental illness... The Department will coordinate with the Governor's Office, other state agencies, community partners, individuals with disabilities, and their families and advocates to develop a draft OP [Operational Protocol] for the Demonstration program that is **reflective of collaboration, consensus and comprehensive stakeholder involvement**." (emphasis added).

The planning grant was awarded, providing HSD the resources needed to write a full proposal as well as to plan for the financing and administration of the proposed program. The MFP proposal was subsequently submitted in January 2011, with projections of anticipated programmatic and

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administrative costs. Since the CoLTS managed long term services program as well as the "community reintegration" program had already been in place for a few years by that time, your Department's MFP proposal was designed to be consistent with this service model. The proposal indicated that the federal MFP program would "increase transitions from institutions" (p. 3), setting a goal of transitioning 670 people from nursing homes and various other facilities to the community over five years under the federal program in addition to those transitioning through the Department's on-going community reintegration program. Many of us in the disability community were asked to submit letters in support of the state's application, and many of us - including Disability Rights New Mexico - did so.

New Mexico's application was approved the following month, as you know, and the program was to begin on July 1, 2011. In October 2011 an HSD staff presentation was made to the Medicaid Advisory Committee indicating that, although there had been delays, MFP would in fact be implemented. It was specifically indicated at the time that, when the proposed 1115 waiver program ("Centennial Care") became operational in 2014, MFP would be a component of it.

After further delay, in March 2012 an MFP stakeholders meeting was convened. HSD staff who had been hired to implement the program were introduced, there was discussion about HSD's implementation plans, and people were asked to sign up for work groups that would assist in the implementation effort. Those of us in attendance were specifically asked to provide input into what would be the best use of the extra federal funds that would be generated, and whether there should still be a process for transitioning those that did not meet the federal guidelines. A second stakeholders meeting was set for May 10th. On May 1st we were notified that the meeting had been cancelled but was to be rescheduled to take place in June.

On April 13, HSD issued proposed rules to implement the MFP program. A public hearing on the proposed regulations was held on June 6, 2012. Although this was a week *after* the department sent its letter to CMS withdrawing from the program, there was no mention of that decision at the hearing.

Throughout this approximately two-year period, there was no hint from the Department that you believed the MFP program was particularly problematic, incompatible with CoLTS or Centennial Care, or that the financial projections were in error.

I reiterate this detailed history to underscore how surprising it was to discover in early June – and not from HSD – that your Department had decided to withdraw from the program and that this decision had already been officially communicated to CMS. The message communicated through this sad process, intentionally or not, is that consumer input and involvement – so explicitly trumpeted in the state's application – is simply conducted for show and has no connection to program development or to policy decisions at HSD.

With regard to the substance of your explanation in support of the decision to withdraw, I remain baffled.

Yes, New Mexico is a national leader in spending more of its Medicaid long-term services dollars on community services rather than nursing homes and state institutions. How does this support a decision to withdraw from MFP? In HSD's MFP application to CMS, you touted New

Mexico's leadership in this area but also specifically acknowledged that there were still 5,700 individuals in institutions, many of whom could be transitioned to home and community settings through MFP. The situation today is no different than it was 18 months ago when this was an argument in *support* of MFP.

I fail to see the merit in your claim that the state will incur extra costs because of the federal guideline limiting eligibility to those who have been in a nursing home for at least 90 days. It is misleading to state that the federal MFP program makes it "mandatory" for people to be in nursing homes for at least 90 days. There is no federal prohibition on moving people out sooner if the state and its providers can do so. It is simply a matter of eligibility for the extra funding provided for services to those who *do* meet the federal guideline. Those with a shorter stay can receive transition and community services at the regular federal match; those whose stay is 90 days or more before moving can get services at the higher MFP match rate. I don't see how MFP would force the state to spend more on *anyone* than it needs to. And in the short run, there would be no additional cost to the state anyway since the capitation (per member per month) rate that the state pays is the same for those in nursing homes and those in waiver slots. There has been no significant change to the payment mechanisms or operational structure of the CoLTS program in the past 18 months, so it is hard to understand why MFP is now incompatible with this approach.

There will be plenty of facility residents over the next five years who will meet the 90 day requirement and want to return to the community. HSD's own numbers in the MFP application indicate that half of all people who transitioned in the three months prior to the MFP application had been in facilities more than 76 days before they received an allocation for a waiver slot. That is just 2 weeks shy of the 90-day federal minimum, and surely these individuals did not move into the community the day that the allocation was made. It is hard to believe that HSD would have to deliberately keep people in nursing homes longer than necessary just to meet the numerical goals set in the MFP application.

I very much appreciate that, after several years of freezing any movement off of the CoLTS-C (D&E) waiting list and allocating available waiver slots only to individuals in facilities who want to transition back through the community reintegration program, you're finally preparing to plan for some allocations that will take some people off of the wait list – which has grown, as a result of the freeze, to over 17,000. That is excellent news, but I fail to see how it is connected to *not* implementing MFP. Disability Rights New Mexico and others supported the state's decision to apply for and implement the federal MFP program in large part because it created an opportunity to generate additional funds, which could be used to serve more people in the waiver program. You now seem to be asking us to believe that the only way to generate funding to serve more people is *not* to implement MFP. This stands logic on its head. New Mexico has been *not* implementing the federal MFP program for the last few years and has not moved *anyone* off the waiting list.

Finally, I realize that the savings to HSD from transitioning 670 individuals over five years through MFP, compared to transitioning them at the regular Medicaid FMAP, is only around \$4 million. But that is still enough to make a significant impact on the waiting list if those savings were reinvested into the program. In recent years, HSD has implemented cost containment measures that included service cuts that were projected to save significantly less than that

amount, so it is disappointing and perplexing that HSD seems uninterested in generating this level of savings when it has the chance to do so in a positive way.

According to data from CMS, 42 other states and the District of Columbia are implementing federal MFP grants. Most of them have been doing so for several years. It remains puzzling to me why we can't seem to make it work, and achieve benefit from it, here in New Mexico.

Sincerely,

Jim Jackson

James Jackson
Executive Director

cc: Sidonie Squier, HSD Secretary
Brent Earnest, HSD Deputy Secretary
Sen. Dede Feldman, Chair, Legislative Health and Human Services Committee
Jeffrey D. Clopein, CMS
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